

**KENTUCKY PERSONNEL BOARD  
MINUTES OF OCTOBER 10, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on October 10, 2008, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman  
Betty Gibson, Member  
Lisa T. Hendricks, Member  
Robert B. Frazer, Member  
M. Suzanne Cassidy, Member  
Julie True, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Christine J. Goodmann, Vice-Chairman

2. **READING OF THE MINUTES OF REGULAR MEETING HELD SEPTEMBER 19, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Ms. True moved to approve the minutes as submitted. Ms. Cassidy seconded, and the motion carried 5-0. (Chairman Higgins does not vote unless noted.) The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Sipek noted that the Board members were provided a copy of the Court of Appeals Order Denying Petition for Rehearing concerning *Department of Corrections v. Joseph Lile*. Mr. Sipek recapped that at the last Board meeting the members denied the Appellant's Motion for Board Order to return the Appellant to work with back pay. Mr. Sipek stated that there may be a request for discretionary view and he will keep the Board informed.

Further, the Board members were provided with a copy of the Franklin Circuit Court Order upholding the Board's order and awarding attorney fees in *Department of Corrections v. Michelle Pitird*. Mr. Sipek stated that in previous meetings it was the Board's concern that state agencies should be more careful in choosing which cases they appeal and the *Pitird* case is a prime example.

Mr. Sipek stated that he received a call inviting the Personnel Board to attend the meeting of the Interim Joint Committee on State Government on October 22, 2008. The meeting was to discuss the Board's Annual Report and any other issues the Board has.

Chairman Higgins then called for the Personnel Cabinet's Report.

#### 4. **PERSONNEL CABINET'S REPORT:**

Hon. Dinah Bevington, Acting Executive Director for Office of Legal Services, was present for the Personnel Cabinet and reported the following:

Ms. Bevington advised that there are a couple of changes the Personnel Cabinet implemented in the past month.

- Reemployment Candidates – In the past, if an Agency had a vacancy they would be provided with a certificate with all candidates qualified for the position, to include Reemployment and Internal Mobility. The Agency would be required to view Reemployment Candidates first and to provide justification of why they are not qualified and then look at internal candidates second. The Personnel Cabinet advised the Agencies that in the future if they have a vacancy, the Cabinet will provide a list of Reemployment Candidates, if any, which the Agency should interview and determine if any applicant is qualified. If the Agency does not select a Reemployment Candidate, the job is then posted for other candidates to be considered. Since Reemployment candidates (laid off employees) block a position, the Cabinet has written to each candidate in order to obtain up-to-date information, including which counties they wanted to work in.
- Immediate Fill Classifications – The Personnel Cabinet reviewed Immediate Fill positions that have not been filled within the past ten months to two years. Agencies have been advised that only immediate need, mission critical, essential, or public welfare positions would qualify for Immediate Fill and the Personnel Cabinet provided the agencies with some guidelines. Nine Immediate Fill positions have been eliminated from the list. However, the Personnel Cabinet can revisit a position should it become critical. Twenty-seven positions remain Immediate Fill and the Personnel Cabinet will review them annually.

101 KAR 1:325, Probation Period. The Personnel Cabinet sent out a memo to all the agencies for them to review the probationary period of classifications they utilize, with an October 31 deadline. Ms. Bevington stated she will present any changes at the next Board Meeting.

Ms. Bevington stated the Personnel Cabinet has sent out many notices to all state employees that they must apply for health insurance during open enrollment. She also stated that information on all the plans can be found on the Cabinet's website.

Ms. Bevington stated that she looked forward to seeing the Board Members at 1:00 p.m. today for their tour of the Personnel Cabinet.

At the conclusion of the Personnel Cabinet's report, Mr. Sipek commended the Personnel Cabinet on their changes, specifically pertaining to Reemployment Candidates. Mr. Sipek stated that in the past there had been complaints from employees who had been recommended for a position, only to find out later that a Reemployment Candidate would get the job.

5. **ORAL ARGUMENTS:**

A. ~~James Kinnaird v. Cabinet for Health and Family Services~~ (Request Withdrawn)

6. **MOTIONS:**

Chairman Higgins called the parties to come forward for the pending motion.

A. Allen Thomas v. Transportation  
--Appellant's Motion to Stay Involuntary Transfer  
--Appellee's Response  
--Appellant's Reply to Appellee's Response

Present were the Hon. Paul Fauri, counsel for the Appellant, and the Hon. Will Fogle, counsel for the Appellee. Mr. Fauri stated that the Appellant, due to the Cabinet's reorganization, was to be transferred to another county and position. Mr. Fauri asked that the transfer not take place since the Appellant would be demoted from a grade 17 to a grade 16 position. If the Agency transferred the Appellant it should be to a grade 17 position, or above. Mr. Fogle stated that the Appellant is requesting the Board to rule on the merits of an appeal by way of a motion, within days of the appeal being filed. Mr. Fogle stated that the Appellant will not lose any pay and will have less travel time after the transfer. Mr. Fogle stated there is no legal basis for the motion. Mr. Fauri responded that the Board has the authority to issue an order to stay the involuntary transfer. The parties answered questions from the Board.

**7. REQUEST FOR INVESTIGATION:**

- A. Transportation Cabinet Reorganization – Request by Randall Arvin
  - Response by Personnel Cabinet (Hon. Daniel F. Egbers)
  - Response of Transportation Cabinet (Hon. Robert L. Russell)
  - Response of Transportation Cabinet (Trinta Cox)
  - (Deferred from August meeting)

Present were Mr. Randall Arvin; the Hon. Ed Logan, counsel for the Transportation Cabinet; Ms. Trinta Cox, Agency representative; Hon. Dinah Bevington, counsel for Personnel Cabinet; and Mr. Bill Madden. The parties answered questions from the Board.

Mr. Frazer moved to defer this matter to the next meeting of the Board. Ms. Gibson seconded and the motion carried 5-0.

**8. ELECTION OF BOARD OFFICERS:**

Prior to the election of officers, Chairman Higgins expressed his gratitude to the Board members and stated he enjoyed being Chairman for the past two years. However, he announced he would be retiring from state government effective November 1, 2008, and he would no longer be serving as a member of the Board.

Chairman Higgins moved to elect Vice-Chairman Tina Goodmann as Chairman. Ms. Gibson seconded and the motion carried 6-0, with Chairman Higgins voting.

Chairman Higgins asked for a nomination for Vice-Chairman. Ms. Gibson made a motion to elect Mr. Bart Frazer for Vice-Chairman. Ms. Hendricks seconded and the motion carried 5-0, with Chairman Higgins voting. Mr. Frazer did not vote.

**9. CLOSED SESSION:**

Ms. Gibson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Frazer seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:10 a.m.)

Mr. Frazer moved to return to open session. Ms. Cassidy seconded and the motion carried 5-0. (12:05 p.m.)

10. CASES TO BE DECIDED:

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. James Kinnaird v. Cabinet for Health and Family Services

Mr. Frazer moved to note Appellee's exceptions and Appellant's response and to accept the recommended order sustaining the appeal to the extent of reinstatement with a 10-day suspension. Ms. True seconded and the motion carried 4-1, with Ms. Hendricks opposing.

B. Shari Bennett v. Cabinet for Health and Family Services

Ms. Cassidy moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

C. Amanda Carroll v. Cabinet for Health and Family Services  
**Moved to November meeting**

D. Lisa Dedden v. Transportation Cabinet – 2 appeals –

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 5-0.

E. Janice Jones v. Transportation (2008-175)

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

F. Randall Moser v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0, with Ms. Cassidy recusing.

G. Lewis Payne v. Transportation Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

H. Clifford Salmons v. Tourism, Arts and Heritage Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

I. Charles Stallard v. Justice and Public Safety Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 4-0, with Ms. Cassidy recusing.

J. Scott Turner v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

K. Crystal Berry v. Health and Family Services

L. Joe Davis v. Justice and Public Safety Cabinet

Ms. Cassidy moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Gibson seconded and the motion carried 5-0.

Show Cause Orders – Response Filed

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute. The Appellant filed a response.

M. Harold Shines v. Public Protection Cabinet

--Appellant's Response

(Tabled from September Board Meeting)

Mr. Frazer moved to note Appellant's response and finding the Appellant had shown sufficient cause for failure to appear at the hearing, to remand this matter to the active docket. Ms. Cassidy seconded and the motion carried 4-1, with Ms. Hendricks opposing.

11. **WITHDRAWALS:**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 5-0.

A. Jerry Burton v. Personnel Cabinet

B. Stephanie McGaughey v. Personnel Cabinet

- C. William Robinson v. Department of Veterans Affairs
- D. Gerry Springer v. Education Cabinet
- E. Elizabeth Venzin v. Cabinet for Health and Family
- F. Kenneth Slack v. Transportation Cabinet
- G. Karen Smith v. Personnel Cabinet
- H. Marlene Tackett v. Kentucky Educational Television (2 appeals)

## 12. SETTLEMENTS:

Ms. Gibson moved to consider the following settlement and to accept the settlement as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Mr. Frazer seconded and the motion carried 5-0.

- A. Randal Jenkins v. Justice and Public Safety Cabinet

## 13. MOTIONS:

- A. Allen Thomas v. Transportation
  - Appellant's Motion to Stay Involuntary Transfer
  - Appellee's Response
  - Appellant's Reply to Appellee's Response

Ms. Cassidy moved to deny Appellant's Motion to Stay Involuntary Transfer. Mr. Frazer seconded and also noted that no other matters or documents were examined or presented after the arguments. The Board's decision was based on procedural aspects not the merits. The motion carried 5-0.

## 14. OTHER:

### Discussion of Proposed Legislation Changes

Chairman Higgins noted that last year the Board met extensively to review housekeeping and substantive issues and when Mr. Crocker and Mr. Andrews went before the Joint Committee, they were not well received. The Board is more focused this year. Mr. Sipek advised that the recent proposed changes sent to the Board are more streamlined than last year. Mr. Sipek stated that the Board should focus on proposed changes to the Personnel Board Election Procedures (KRS 18A.0551); specifically, to make it safer (Social Security number changed to the Employee ID number) and cheaper (under the current system it would cost the Board about \$40,000). Mr. Sipek advised that finding the funds for the next election, might be at the cost of delaying some hearings. Mr. Sipek stated it is important to get the legislators' attention and support.

Mr. Sipek stated that Mr. Crocker has prepared two alternatives. The first alternative is barebones, specifically changing dates to make it more realistic, changing the Social Security number to the Employee ID number, and providing more ways for employees to send ballots to the Board, other than first class mail. The second alternative, which is preferred, is using the Kentucky Human Resource Information System (KHRIS) to allow employees to submit electronic ballots. Beginning January 1, 2009, employees will be using KHRIS to submit timesheets, etc. This system will eliminate printing and mailing which is the bulk of the cost. Mr. Crocker stated that the current process is cumbersome with having to mail information to each employee and, in turn, the employee returning their ballot by mail. Chairman Higgins suggested that employees be notified by e-mail. Ms. Cassidy asked for clarification regarding the use of computers and if all employees will have access to computers. She asked if employees in Eastern Kentucky and the garages will have an ID number, an e-mail address and access to a computer. Mr. Crocker said that was his understanding. Mr. Crocker also stated that the language would be changed to allow employees to cast their ballot on state time using state materials or equipment. Mr. Crocker stated language could be added to make it mandatory for state agencies to provide computer access during the election. Mr. Sipek stated that some information can be circulated using the state paycheck, but under the KHRIS system paper checks may be eliminated. To cut costs, Mr. Crocker suggested putting information on the website and requesting that each agency provide the information to their employees. Ms. True asked whether it would be an issue for employees to trust putting personal information on the computer. Mr. Crocker stated that employees did not like putting their Social Security number and personal information on the forms that were mailed to a third party. Mr. Frazer asked if there was much interest in the election. Mr. Crocker stated that people do not want to take the time to fill out the ballot. Mr. Sipek stated that lack of interest may be that the employees are not informed enough about the candidates. Ms. Cassidy said maybe unions or other employee representative groups could be contacted to get feedback. Mr. Sipek said we should give the employees options, to either apply on-line or submit their ballot some other way. Ms. Hendricks asked how to verify the person voting and Mr. Sipek stated by the Employee ID number.

Ms. True asked about reversion. Mr. Sipek stated that the term reversion applies to two different situations, one an employee on promotional probation returns to the previous position and the other an employee from unclassified service returns to classified service (now termed reentrance).

Ms. True asked if Board Members could observe the Interim Committee meeting. Mr. Sipek said there is no problem with a Board Member attending.

Chairman Higgins asked if there was any further business, which Mr. Sipek advised there was not.

There being no further business, Mr. Frazer moved to adjourn. Ms. Hendricks seconded and the motion carried 5-0. (12:44 p.m.)



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Greg Higgins, Chairman

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Christine J. Goodman, Vice-Chairman

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Betty Gibson, Member

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Lisa T. Hendricks, Member

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Robert B. Frazer, Member

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M. Suzanne Cassidy, Member

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Julie True, Member